

AG Contract No KR02-0944TRN  
ADOT ECS File No. JPA 02-029  
Project No: 095 YU 012  
TRACS No. H4415 04C 02C  
Section: US 95, Somerton - 32<sup>nd</sup> Street

## INTERGOVERNMENTAL AGREEMENT

BETWEEN  
THE STATE OF ARIZONA  
AND  
YUMA COUNTY FLOOD CONTROL DISTRICT

THIS AGREEMENT is entered into 12th December, 2002, pursuant to Arizona Revised Statutes, Sections 11-951 through 11-954, as amended, between the STATE OF ARIZONA, acting by and through its DEPARTMENT OF TRANSPORTATION (the "State") and YUMA COUNTY FLOOD CONTROL DISTRICT, acting by and through its BOARD OF DIRECTORS (the "District")

### I. RECITALS

1. The State is empowered by Arizona Revised Statutes Section 28-401 to enter into this agreement and has by resolution, a copy of which is attached hereto and made a part hereof, resolved to enter into this agreement and has delegated to the undersigned the authority to execute this agreement on behalf of the State

2. The District is empowered by Arizona Revised Statutes Section 11-952 and 48-3603(C)(3) et seq, to enter into this agreement and has by resolution, a copy of which is attached hereto and made a part hereof, resolved to enter into this agreement and has authorized the undersigned to execute this agreement on behalf of the District.

3. The District entered into an agreement with K-Mart Corporation for the construction of the 32<sup>nd</sup> Street Storm Drain Force Main ("Force Main"), which includes payback provisions to K-Mart Corporation in the event the Force Main is utilized by other parties.

4. Incident to the State's improvements to US 95, the State requests the right to construct a connection to the District's existing storm drain system at US 95 and 32<sup>nd</sup> Street, hereinafter referred to as the "Project". The location being more particularly set forth and delineated upon the map attached hereto and incorporated as Exhibit "A". The cost for connection is based on a per acre amount, plus accrued interest from 23 November, 1994, all at State's expense. The parties hereto agree that the State shall be the lead agency for the Project.

THEREFORE, in consideration of the mutual covenants expressed herein, it is agreed as follows:

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NO. 25681

Filed with the Secretary of State

Date Filed: 12/12/02

Pete Bayless

Secretary of State

By: Dwight V. Greenwald

## **II. SCOPE OF WORK**

1. The District will:

a. Upon execution of this agreement, invoice the State an amount currently estimated to be \$8,200 (Payback Amount) for the right to construct a connection to the storm drain system. The actual Payback Amount will be computed as specified in the K-Mart Agreement of November 16, 1998.

b. Permit the State to utilize Force Main.

c. Remit the pay back amount to K-Mart Corporation.

2. The State will:

a. Upon execution of this agreement and receipt of an invoice from the County (based on a rate per acre plus interest and agreed to by the parties), remit the Payback Amount for the right to construct a connection to the storm drain system.

b. Request and obtain a permit from the City of Yuma, for a right of entry access outside the State right-of-way during construction and as required to perform operation and maintenance of the Project.

c. Upon concurrence from the District, construct the Project, administer same and make all payments to the contractor. Be responsible for any Project cost increases and any contractor claims for extra compensation due to delays or whatever reason attributable to the State.

d. Upon completion, approve and accept the Project on behalf of the parties hereto, and provide maintenance.

e. The State acknowledges that the Improvements provide for the drainage of storm water into the 32<sup>nd</sup> Street Storm Force Main, which is connected to the Yuma Mesa Conduit, is a flood control and drainage facility owned, maintained, controlled and operated by the District. The system has been constructed with a maximum capacity determined by a number of factors including engineer's studies, available funds, allocation of resources, utilization of existing facilities and other appropriate policies and considerations. The District shall retain control of the system including all connections, valves and controls. It is understood that in unusual flooding conditions the capacity of the system may be exceeded and the system may not be capable of accepting water from the Improvements. The parties agree that the District shall cause its engineers, officers, employees, servants and agents to use their best efforts to control the system for the benefit of all of the citizens of the District, and the District shall have no monetary liability to the State by reason of mistake, delay or deficiency related to the control of the system except those resulting from bad faith refusal of the District to perform its statutory responsibilities.

## **III. MISCELLANEOUS PROVISIONS**

1. This agreement shall remain in force and effect until completion of said Project and said reimbursements; provided, however, that this agreement, except any provisions for maintenance, which shall be provisional, may be cancelled at any time prior to the award of a Project construction contract, with thirty days written notice to the other party.

2. This agreement shall become effective upon filing with the Secretary of State.
3. This agreement may be cancelled in accordance with Arizona Revised Statutes Section 38-511.
4. The provisions of Arizona Revised Statutes Section 35-214 are applicable to this contract.
5. In the event of any controversy, which may arise out of this agreement, the parties hereto agree to abide by required arbitration as is set forth for public works contracts in Arizona Revised Statutes Section 12-1518.
6. All notices or demands upon any party to this agreement shall be in writing and shall be delivered in person or sent by mail addressed as follows:

Arizona Department of Transportation  
Joint Project Administration  
205 South 17 Avenue, Mail Drop 616E  
Phoenix, AZ 85007

Yuma County  
Flood Control District Manager  
2703 South Avenue B  
Yuma, AZ 85364

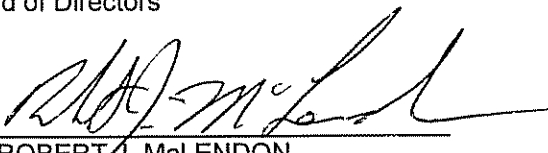
7. Attached hereto and incorporated herein is the written determination of each party's legal counsel that the parties are authorized under the laws of this state to enter into this agreement and that the agreement is in proper form.

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IN WITNESS WHEREOF, the parties have executed this agreement the day and year first above written.


**YUMA COUNTY FLOOD CONTROL DISTRICT**

Board of Directors

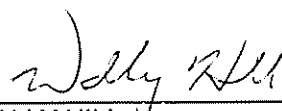
By   
ROBERT J. McLENDON  
Chairman of the Board

**STATE OF ARIZONA**

Department of Transportation

By   
SUSAN TELLEZ  
CONTRACT ADMINISTRATOR

ATTEST:

By   
WALLY HILL  
Clerk of the Board

OFFICE OF THE  
BOARD OF SUPERVISORS  
198 Main Street  
Yuma, Arizona 85364

WALLY HILL  
COUNTY ADMINISTRATOR



LENORE LOROÑA STUART  
DISTRICT 1  
LUCY SHIPP  
DISTRICT 2  
CASEY PROCHASKA  
DISTRICT 3  
MARCO A. (TONY) REYES  
DISTRICT 4  
ROBERT J. (BOB) McLENDON  
DISTRICT 5

STATE OF ARIZONA)

SS.

COUNTY OF YUMA)

I, Wally Hill, Clerk of the Board of Directors of the Yuma County Flood Control District, do hereby certify that I am required by law to maintain custody of the minutes of the Board of Directors and that the following is a true and correct copy of the portion of the minutes of the Board of Director's meeting held October 21, 2002.

"Upon motion and unanimous vote, the Board of Directors authorized the Chairman of the Board to sign an Intergovernmental Agreement between the State of Arizona and the Yuma County Flood Control District covering the payback to K-Mart Corporation for the connection to the storm line along 32<sup>nd</sup> Street."

In Witness Whereof I hereunto set my hand and  
Affixed the Official Seal of the Flood Control District. Done  
at Yuma, the County Seat this 21st day of October, 2002

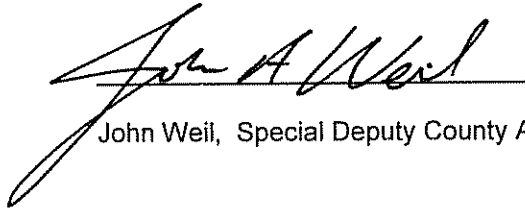
A handwritten signature in cursive script, reading "Wally Hill", is written over a horizontal line.

Wally Hill  
Clerk of the Board of Directors

APPROVAL OF THE COUNTY ATTORNEY

I have reviewed the above referenced proposed intergovernmental agreement, between the DEPARTMENT OF TRANSPORTATION, HIGHWAYS DIVISION, and YUMA COUNTY FLOOD CONTROL DISTRICT and declare this agreement to be in proper form and within the powers and authority granted to the Flood Control District under the laws of the State of Arizona.

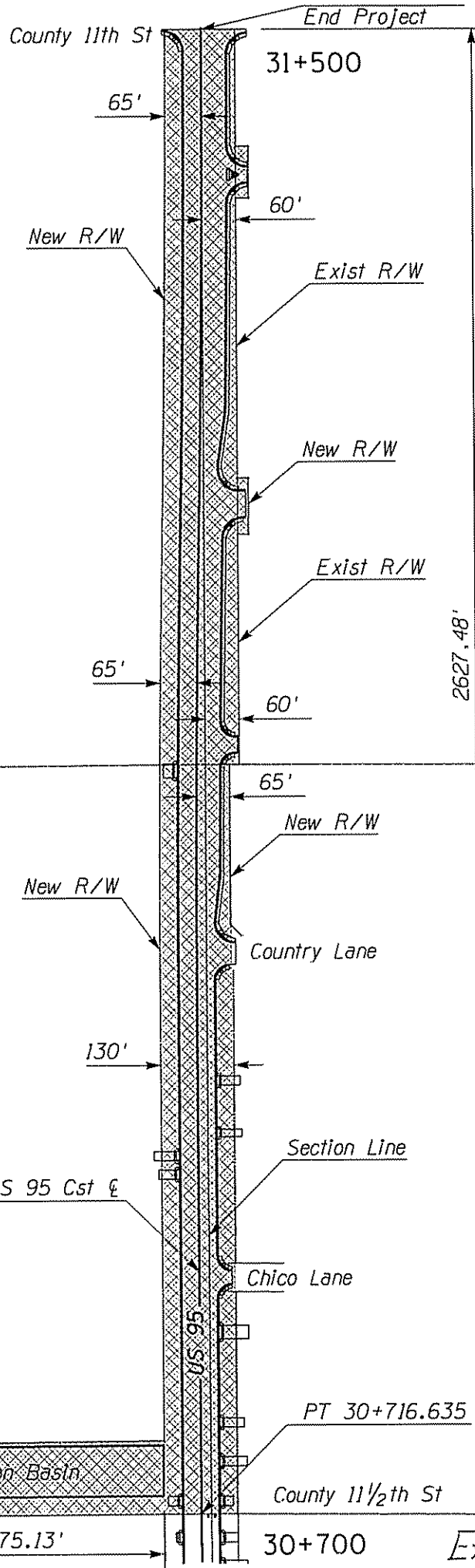
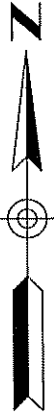
DATED this 2nd day of October, 2002

  
John Weil, Special Deputy County Attorney

**US 95, Somerton - 32nd St**  
**Project No. 063-1(18)N**  
**TRACS No. H4415 02 C**

Approximate US 95 On-site Drainage Area from the Central Canal North to County 11th St is 9.70 acres.

Dimensioning is in feet.  
 Stationing is metric from the US 95, Somerton - 32nd St Project.



1/16 Section Line

New R/W

Country Lane

130'

US 95 Cst E

Section Line


Chico Lane

PT 30+716.635

County 11 1/2 th St

30+700

EXHIBIT "A"

 = Drainage Area to be drained into the County 11th Street Force Main





STATE OF ARIZONA

OFFICE OF THE ATTORNEY GENERAL  
TRANSPORTATION SECTION

1275 WEST WASHINGTON STREET, PHOENIX, AZ. 85007-2926

JANET NAPOLITANO  
ATTORNEY GENERAL

TRN Main: (602) 542-1680  
Direct: (602) 542-8855  
Fax: (602) 542-3646

MAIN PHONE : (602) 542-1680  
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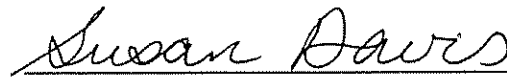
**INTERGOVERNMENTAL AGREEMENT**  
**DETERMINATION**

A.G. Contract No. KR02-0944TRN (JPA 02-029), an Agreement between public agencies, has been reviewed pursuant to A.R.S. § 11-952, as amended, by the Undersigned Assistant Attorney General who has determined that it is in the proper form and is within the powers and authority granted to the State of Arizona.

No opinion is expressed as to the authority of the remaining Parties, other than the State or its agencies, to enter into said Agreement.

DATED December 5, 2002.

JANET NAPOLITANO  
Attorney General

  
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SUSAN E. DAVIS  
Assistant Attorney General  
Transportation Section

/srs

Att.